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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,458	02/27/2004	Joseph G. Elnar	134/158	7827
27612	7590	07/18/2006	EXAMINER	
<b>AVERILL &amp; VARN</b> 8244 PAINTER AVE. WHITTIER, CA 90602				BROWN, MICHAEL A
		ART UNIT		PAPER NUMBER
				3764

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/787,458	ELNAR, JOSEPH G.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Brown	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 2-27-04.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8-9, 13-14 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Elnar.

Elnar discloses in figures 1-8C a massager mountable in a spa wall, comprising a main housing (14, 16, 19 and 19), having a wall mounting 16, supportable in the massage opening, an exterior end (the opposite side of 16, at 20), opposite the wall mounting end, a main housing interior space 19', a gear housing 45, having a turbine end (the end at 42), the gear housing is removably supported in the interior space of the main housing, the gear box is removable through the wall mounting end (fig. 3), a turbine 42 in the turbine end of the gear housing (fig. 2), a rotating massager 23, the gear housing is threadably secured to the main housing (via fasteners 22), the turbine is mechanically coupled to the rotating massager by gears (the gears in the gear box), the turbine is mechanically coupled to the rotating massager by at least one planetary gear assembly (the gear assembly inside of 45), a water inlet 43, a water outlet 44, disposed behind the outer surface (fig. 2), , the gear housing includes a handle portion (any portion of the gear housing that the user can grasp is a handle portion) and a method of providing a massage, as recited in claim 14. The turbine 42 is inside a housing. The

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gear train reduces rotation rate and the rotating massager is within a casing 24 and an inlet line 43

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elnar.

Elnar discloses in figures 1-8C a massager, substantially as claimed. However, Elnar doesn't disclose whether the at least one planetary gear assembly includes two planetary gear assemblies in series or the rotation rate of the massager. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the planetary gear assembly disclosed by Elnar could be constructed in series because it is simply a matter of duplication to form the gear assembly in series. The rotation rate recited in claims 6-7 is a function that Elnar is capable of performing. The turbine includes a shaft (not shown) that is capable of rotating at the speed set forth in the claims. The turbine is coupled to massager by a shaft (a shaft that is inside of 45).

Claims 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elnar in view of Prehodka.

Elnar discloses in figures 1-8C a massager, substantially as claimed. However, Elnar doesn't disclose the rotating massager being a plurality of ball. Prehodka teaches in

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figures 1-6 a massager comprising a rotating massager that includes balls 24 and a rotating plate 20. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the rotating plate and the balls as taught by Prehodka could be substituted for the rollers disclosed by Elnar because both massager are functionally equivalent.

Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Prehodka.

Prehodka teaches in figures 1-6 a rotating massager that includes a plurality of balls 24 that includes three balls. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the balls could be three balls as taught by Prehodka. The balls could be covered by the boot 46 disclosed by Elnar.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. No additional prior art was cited in this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown  
July 2, 2006



**MICHAEL A. BROWN**  
**PRIMARY EXAMINER**